

8 September 2016

APPLICATION FOR WAIVERS FROM RULES 7.4.1, 7.6.5, 8.3.1 AND 9.2.1 OF THE NZX MAIN BOARD LISTING RULES - SMARTSHARES LIMITED

1. This is a decision of the Special Division of the NZ Markets Disciplinary Tribunal (*Special Division*).
2. Capitalised terms that are not defined in this decision have the meanings given to them in the NZX Main Board Listing Rules (*the Rules*).

Background

3. Smartshares Limited (*Smartshares*) is the manager of several exchange traded funds (*ETFs*) with securities Quoted on the NZX Main Board. Smartshares is a wholly owned subsidiary of NZX Limited (*NZX*) and accordingly, its listing is regulated by the Special Division.
4. Smartshares intends to resettle five of the EFTs which are currently constituted as group investment funds (*the GIFs*) as unit trusts (*the Trusts*): the NZX 10 Fund will be resettled as the NZ Top 10 Fund, the NZX MidCap Index Fund will be resettled as the NZ Mid Cap Fund, the NZX 50 Portfolio Index Fund will be resettled as the NZ Top 50 Fund, the NZX Australian MidCap Index Fund will be resettled as the Australian Mid Cap Fund and the NZX Australian 20 Leaders Index Fund will be resettled as the Australian Top 20 Fund. Units in the Trusts are intended to be Quoted on the NZX Main Board.
5. The resettlement of the GIFs as unit trusts (*the Resettlement*) will enable the GIFs to form part of the Smartshares Exchange Traded Funds Scheme, which will be a registered managed investment scheme under the Financial Markets Conduct Act 2013 with Public Trust as supervisor.
6. The Resettlement of each GIF must be approved by its unitholders by way of a special resolution under the terms of the trust deeds.

Waivers Sought

7. Smartshares has applied for waivers from Rules 7.4.1, 7.6.5, 8.3.1 and 9.2.1 in relation to the Resettlement.

Rule 9.2.1

8. The Resettlement will constitute a Material Transaction with a Related Party. Rule 9.2.1 requires Material Transactions with Related Parties to be approved by Ordinary Resolution. Under Rule 9.2.5, the notice of meeting must be accompanied by an Appraisal Report and Rule 9.3 sets out certain voting restrictions.
9. Smartshares submitted in support of a waiver from Rule 9.2.1 that:
 - a. *No undue influence*: Rule 9.2.1 is designed to ensure that undue influence is not exercised by a Related Party to reach a favourable outcome for the Related Party in respect of a transaction. Smartshares' decision to enter into the Resettlement has been driven by regulatory and compliance considerations and has not been influenced by any Related Party.

- b. *No undue transfer of value*: The Resettlement does not result in an undue transfer of value from the GIF to any Related Party. The assets of each GIF will be transferred to the replacement Trust and each GIF unitholder will have their units redeemed with the proceeds applied towards the issue price of units in the respective replacement Trust (aside from overseas unitholders as described below).
- c. *Unitholders treated equitably*: GIF unitholders (aside from overseas unitholders as described below) will be treated identically under the Resettlement.

Rule 7.4.1

- 10. The Resettlement will result in GIF unitholders (aside from overseas unitholders as described below) being conferred rights to receive units in the Trusts. Rule 7.4.1 requires an Issuer comply with Rule 7.3.1 before conferring rights or entitlements to a third party's securities.
- 11. Smartshares submitted in support of a waiver from Rule 7.4.1 that the entitlement to units in the Trusts is integral to the Resettlement and must be approved by the unitholders of each GIF.

Rule 7.6.5 and 8.3.1

- 12. Overseas unitholders comprise approximately less than 1% of all unitholders in each GIF. Due to the difficulties involved in complying with foreign securities laws, as part of the Resettlement, overseas unitholders will be paid an amount of cash that represents their GIF unitholding rather than having units issued in the replacement Trust.
- 13. Overseas unitholders will be entitled to vote on the resolutions posed to all GIF unitholders to approve the Resettlement. However, Smartshares has applied for waivers from Rules 7.6.5 and 8.3.1 so that a separate resolution of overseas unitholders is not required.
- 14. Smartshares submitted in support of waivers from Rule 7.6.5 and 8.3.1 that the differing treatment of overseas unitholders is due to the need to otherwise comply with the securities laws of multiple jurisdictions and that if separate resolutions of overseas unitholders were required it is likely that the Resettlement would not proceed. Smartshares noted that the policy rationale for the exemption in Rule 7.3.4(h) exempting proportional issuance into foreign jurisdictions is applicable here.

Decision

- 15. On the basis that the information provided to the Special Division is full and accurate in all material respects, the Special Division grants Smartshares the waivers sought from Rules 7.4.1, 7.6.5, 8.3.1 and 9.2.1 in respect of the Resettlement as described in this decision.

Reasons

- 16. In coming to its decision, the Special Division considered the submissions from Smartshares and agreed that it is appropriate to grant the waivers sought given the nature of the Resettlement proposed and that the Resettlement of each GIF must be approved by its unitholders by way of a special resolution.

Publication

- 17. This decision is confidential until the Resettlement is Announced, after which time this decision will be published in accordance with Rule 1.11.2.

DATED 8 SEPTEMBER 2016



Andrew Beck, Chairman, Special Division